

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3  
4 - - - - - X  
5 :  
6 GLOBAL GAMING PHILIPPINES, LLC, :  
7 :  
8 Plaintiff, :  
9 :  
10 v. : Case No.  
11 : 21 Cv. 2655  
12 ENRIQUE K. RAZON, JR.; : (LGS) (SN)  
13 BLOOMBERRY RESORTS AND HOTELS INC.; :  
14 SURESTE PROPERTIES INC.; :  
15 :  
16 Defendants. :  
17 :  
18 - - - - - X  
19  
20 \*\*HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY\*\*  
21  
22 VIDEOTAPED DEPOSITION OF  
23 BINYOMIN AVROHOM KAPLAN  
24 MAY 19, 2022  
25  
26 VIDEOTAPED DEPOSITION OF BINYOMIN AVROHOM  
27 KAPLAN, produced as a witness at the instance of the  
28 Plaintiff, and duly sworn remotely, was taken in the  
29 above-styled and numbered cause on MAY 19, 2022, at the  
30 offices of Milbank LLP, 55 Hudson Yards, New York, New  
31 York, from 9:44 a.m. to 4:46 p.m., before Bridget  
32 Lombardozi, CSR, RMR, CRR, and Notary Public of the  
33 State of New York, pursuant to the Federal Rules of  
34 Civil Procedure and the provisions stated on the record.

1 together sometimes as "Bloomberry," you'll  
2 understand me?  
3 A. Yes.  
4 Q. So was GGP represented by counsel in  
5 connection with negotiating the MSA?  
6 A. Yes.  
7 Q. Counsel in the U.S.?  
8 A. Yes.  
9 Q. And counsel in the Philippines?  
10 A. Yes.  
11 Q. Which counsel in the U.S.?  
12 A. A combination of internal Cantor counsel  
13 and Paul Hastings.  
14 Q. And which counsel in the Philippines?  
15 A. Puno & Puno.  
16 Q. Did GGP conduct any due diligence  
17 regarding Bloomberry or Mr. Razon before entering  
18 into the MSA?  
19 A. "Bloomberry" means Sureste and BRHI?  
20 Q. We can start with that.  
21 A. Okay. Because I don't think BRC was in  
22 existence at the time before the MSA. But, yes,  
23 we did do due -- due diligence.  
24 Q. Describe the due diligence.  
25 A. I think it's documents that you've seen.

**Fissell Decl.  
Ex. 34**

1 it does look the same.  
2 Q. Okay. Apart from what's reflected in  
3 this Exhibit 2010 and apart from what may be  
4 reflected in the Spectrum Group's report, did GGP  
5 conduct any other due diligence into BRHI and SPI  
6 before GGP entered into the MSA?  
7 MR. AINSWORTH: Objection.  
8 Assumes facts not in evidence.  
9 A. Not to my knowledge.  
10 Q. All right. So what was the -- did --  
11 let me withdraw that.  
12 All right. Before it entered into the  
13 MSA, did GGP conduct any due diligence or  
14 investigation into the assets of BRHI and SPI?  
15 A. I think that's in here.  
16 Q. When you say "in here," are you  
17 referring to this Exhibit 2010?  
18 A. That you just gave me, yes.  
19 Q. Okay. Do you have any knowledge of any  
20 such due diligence apart from what may be  
21 reflected in Exhibit 2010?  
22 A. No.  
23 Q. Prior to entering into the MSA, did GGP  
24 conduct any due diligence into the financial  
25 condition of BRHI or SPI?

1 A. Yes, what's reflected in here.  
2 Q. And apart from what may be reflected  
3 here, you're not aware of any other due diligence  
4 that GGP conducted into the financial condition of  
5 BRHI and SPI, is that correct?  
6 A. Correct.  
7 Q. Prior to entering into the MSA, did GGP  
8 conduct any due diligence into the level of  
9 capitalization of BRHI or SPI?  
10 A. Is that different than what you just  
11 asked me? Yes. This diligence.  
12 Q. Referring to Exhibit 20 --  
13 A. Yes, Exhibit 2010.  
14 Q. And you're not aware of any other such  
15 due diligence apart from what's reflected in  
16 Exhibit 2010, correct?  
17 A. And the other report I mentioned.  
18 Q. Is it your understanding that the other  
19 report you mentioned deals with the level of  
20 capitalization of BRHI or SPI?  
21 A. No.  
22 Q. Now, if I were to ask about due  
23 diligence into the solvency of BRHI or SPI, would  
24 you give me the same answer, that it's reflected  
25 in Exhibit 2010 and you're not aware of any other

1 A. I don't recall seeing anything like that  
2 in the MSA.

3 Q. Did GGP have any discussions about  
4 whether Mr. Razon should be a party to the MSA?

5 A. No.

6 Q. Did GGP have any discussions about  
7 whether Mr. Razon should be a party to the equity  
8 option agreement or the related participation  
9 agreement?

10 MR. AINSWORTH: Objection.  
11 Beyond the scope of the deposition  
12 notice.

13 You can answer in your  
14 individual capacity.

15 A. Yes.

16 MR. WALFISH: I just want to  
17 note for the record that I don't  
18 accept Mr. Ainsworth's objections and,  
19 hopefully, Mr. Ainsworth will be a  
20 little bit more judicious with his  
21 objections.

22 MR. AINSWORTH: Hopefully,  
23 you'll be more judicious with your  
24 questions.

25 BY MR. WALFISH:

1 Q. So, Mr. Kaplan, to the extent that there  
2 were such discussions, please describe them.

3 MR. AINSWORTH: Objection.

4 Give me a second. Let me read the...  
5 Again, it's beyond the scope  
6 of the deposition topic.

7 And you can answer in your  
8 individual capacity to the extent you  
9 know.

10 A. Yeah, I want to bifurcate this. Any  
11 discussions that we had internally were  
12 privileged. We proposed in an initial interaction  
13 on the equity option agreement that Mr. Razon  
14 guarantee the obligations.

15 Q. And what was the reason for that  
16 proposal?

17 A. We had no idea who was the grantor at  
18 the time.

19 Q. And was that proposal ultimately adopted  
20 in the final version of the agreement?

21 A. No. We received a corporate entity with  
22 substance and withdrew the request.

23 Q. At any time before the MSA was signed,  
24 did anybody from the Bloomberg side ever say to  
25 anybody on the GGP side, in words or substance,

1 that Mr. Razon's personal assets would be  
2 available to satisfy the debt or obligation of  
3 BRHI or SPI?

4 A. I understand that Mr. Razon spoke of  
5 contributing more capital to the entity as part of  
6 the discussions.

7 Q. Apart from that, did anyone from the  
8 Bloomberg side say, in words or substance, that  
9 if BRHI or SPI had an obligation under the MSA,  
10 that Mr. Razon's personal assets could be looked  
11 to to satisfy that obligation?

12 A. I don't think so.

13 Q. Before the MSA was signed, did anybody  
14 from the Bloomberg side ever say to anybody on  
15 the GGP side, in words or substance, that  
16 Mr. Razon was guaranteeing the obligations of BRHI  
17 or SPI?

18 A. I don't think so.

19 Q. Before the MSA was signed, did anybody  
20 from the Bloomberg side ever say to anybody on  
21 the GGP side, in words or substance, that  
22 Mr. Razon would be personally liable for any debts  
23 or obligations of BRHI or SPI?

24 MR. AINSWORTH: Objection.  
25 Asked and answered.

1 A. I don't think so.

2 Q. At any time before the MSA was signed,  
3 did anybody from the Bloomberg side ever say to  
4 anybody on the GGP side, in words or substance,  
5 that there would be recourse to any company or any  
6 person other than BRHI or SPI for the obligations  
7 of BRHI and SPI under the MSA?

8 MR. AINSWORTH: Objection.

9 A. I don't think so.

10 Q. At any time before the MSA was signed,  
11 did anybody on the GGP or Cantor side ever say to  
12 anyone else on that side, in words or substance,  
13 that Mr. Razon's personal assets would be  
14 available to satisfy a debt or obligation of BRHI  
15 or SPI?

16 A. It was not contemplated.

17 Q. So is the answer to my question, no,  
18 nobody ever said that?

19 A. Correct.

20 Q. At any time before the MSA was signed,  
21 did anyone on the GGP or Cantor side ever say to  
22 anyone else on that side, in words or substance,  
23 that Mr. Razon was providing a guarantee of the  
24 obligations of BRHI and SPI under the MSA?

25 MR. AINSWORTH: Objection.

1 Asked and answered.

2 A. I don't think so.

3 Q. At any time before the MSA was signed,

4 did anyone on the GGP or Cantor side ever say to

5 anyone else on that side, in words or substance,

6 that Mr. Razon would be personally liable for any

7 debts or obligations of BRHI or SPI?

8 MR. AINSWORTH: Objection.

9 Hold on.

10 You can answer to the extent

11 it doesn't disclose attorney-client

12 communications.

13 A. I'm not sure what the difference is

14 between this question and the one before, but

15 ultimately the answer is I -- I'm not aware.

16 Q. You're not aware that anybody ever said

17 that, correct?

18 A. Correct.

19 Q. At any time before the MSA was signed,

20 did anyone on the GGP or Cantor side ever say to

21 anyone else on that side, in words or substance,

22 that there would be recourse to any company or any

23 person other than BRHI or SPI for the obligations

24 of BRHI and SPI under the MSA?

25 MR. AINSWORTH: Objection.

1 Again, to the extent you can

2 answer without disclosing

3 attorney-client communications, you

4 can.

5 A. I'm not aware.

6 Q. Meaning you're not aware that anyone

7 said that, right?

8 A. Correct.

9 Q. Prior to entering into the MSA, did GGP

10 conduct any due diligence or investigation into

11 whether any arbitration award or judgment against

12 BRHI or SPI would be enforceable in the

13 Philippines?

14 MR. AINSWORTH: Objection.

15 Again, to the -- to the

16 extent you can answer without

17 disclosing attorney-client

18 communications, you can answer.

19 A. It was not contemplated.

20 Q. You're aware that there's an arbitration

21 clause in the MSA?

22 A. I am.

23 Q. You're aware that the way arbitration

24 works is a tribunal is convened and eventually

25 renders an award presumably in favor of one party

1 instruction. Same objection.

2 A. I have disclosed the discussions that

3 I'm aware of.

4 Q. And how about the basis for the

5 allegation?

6 MR. AINSWORTH: Objection.

7 Q. Anything else?

8 MR. AINSWORTH: Objection.

9 Same instruction. Same obj -- same

10 objection. Same instruction.

11 A. I don't know whether there's anything

12 else.

13 Q. All right. Let's turn to something

14 else.

15 You're aware that GGP has not filed a

16 proceeding to recognize and enforce the final

17 arbitral award in the Philippines, right?

18 A. Yes.

19 Q. Why has GGP not done so?

20 MR. AINSWORTH: Objection.

21 To the extent you can answer

22 without disclosing attorney-client

23 communications, work product, you may

24 do so.

25 A. Leaving aside privileged discussions, I

1 think that we have seen continued thwarting of the

2 sale of the option shares with the renewed

3 injunction and bond and it creates complex

4 questions about the process.

5 Q. You're also aware, though, that the

6 courts of the Philippines have said that to get

7 that injunction lifted, GGP needs to get the

8 arbitral awards recognized and enforced. You know

9 that, right?

10 MR. AINSWORTH: Objection.

11 Calls for a legal conclusion.

12 To the extent you can answer

13 without disclosing attorney-client

14 communications, you may.

15 A. I understand the injunction has not been

16 released.

17 Q. Well, but are you aware one way or the

18 other about whether the courts of the Philippines

19 have said that to get the injunction lifted, GGP

20 needs to have the arbitral awards recognized and

21 enforced?

22 MR. AINSWORTH: Objection.

23 Calls for a legal conclusion.

24 To the extent you can answer

25 without disclosing attorney-client